

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

In re: EMPIRE GENERATING CO, LLC, *et al.*,

Debtors.

ASSF IV AIV B HOLDINGS III, L.P., *et al.*,

Appellants,

-against-

EMPIRE GENERATING CO, LLC, *et al.*,

Appellees.

Lead Case  
19-cv-09111 (NSR)

Consolidated Action  
19-cv-09146 (NSR)

**OPINION & ORDER**

NELSON S. ROMÁN, United States District Judge

Pending before the Court is the appeal of minority lenders ASSF IV AIV B Holdings III, L.P., AEIF Trade, LLC, and SPTIF Parent, LLC. (collectively, “Appellants”) from certain orders entered by the United States Bankruptcy Court for the Southern District of New York (Robert D. Drain, B.J.). Appellants challenge the Bankruptcy Court’s orders granting the motions of Empire Generating Co, LLC, and certain of its affiliates (collectively, “Appellees” or “Debtors”) to

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approve the sale of their assets, (Bankr. Doc.<sup>1</sup> 298 (the “Sale Order”)), and to confirm their proposed reorganization plan, (Bankr. Doc. 304 (the “Confirmation Order”)).

Appellants filed notices of appeal with this Court on October 1, 2019, and October 2, 2019, respectively. (Case No. 19-cv-9111, ECF No. 1; Case No. 19-cv-9146, ECF No. 2.) On October 16, 2019, Appellants filed a motion before the Bankruptcy Court to stay consummation of the Sale Order and Confirmation Order pending the resolution of their appeals. (Bankr. Doc. 338.)

While that motion was pending, on October 18, 2019, Appellants filed additional motions in this Court to stay consummation of the Sale Order and Confirmation Order pending the resolution of their appeals and to expedite the briefing schedule on their appeals. (Case No. 19-cv-9111, ECF No. 8; Case No. 19-cv-9146, ECF No. 9.) On October 31, 2019, Appellants filed supplemental motions arguing that Appellees’ recently stated intention to close the sale of their assets and consummate their reorganization plan on or before November 1, 2019, confirmed that a stay was warranted to ensure meaningful appellate review. (Case No. 19-cv-9111, ECF No. 13; Case No. 19-cv-9146, ECF No. 14.) Appellants filed a similar supplemental motion in the Bankruptcy Court. (Bankr. Doc. 344.)

On November 4, 2019, Appellees filed a Notice of Occurrence of Effective Date of the Debtors’ Modified Amended Joint Chapter 11 Plan (the “Notice”) in the Bankruptcy Court. (Bankr. Doc. 358.) The Notice indicated that, pursuant to the Confirmation Order, the Effective Date of the Debtors’ restructuring plan occurred on November 4, 2019, and that as a result, “Debtors have emerged from the chapter 11 proceeding as Reorganized Debtors.” (*Id.*)<sup>2</sup> On November 5, 2019, Appellants filed additional supplemental motions reporting the foregoing

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<sup>1</sup> “Bankr. Doc.” refers to documents filed in the U.S. Bankruptcy Court for the Southern District of New York under docket number 19-23007.

<sup>2</sup> The Court notes that the Bankruptcy Court did not grant Appellants’ motion for a stay pending appeal prior to consummation of the reorganization plan. (*See* Bankr. Doc. 371 at 26:1-5.)

development to this Court and stating that expedited briefing of their appeals remained warranted. (Case No. 19-cv-9111, ECF No. 17; Case No. 19-cv-9146, ECF No. 18.) However, this Court declined to set an expedited schedule and briefing was completed pursuant to the Federal Rules of Bankruptcy Procedure as of January 21, 2020.

Since the parties have reported that consummation of the Sale Order and Confirmation Order occurred as of November 4, 2019, and briefing of this appeal was completed as of January 21, 2020, Appellants' motions are rendered academic and are therefore denied as moot. Appellants' bankruptcy appeal is deemed fully submitted and remains pending before this Court.

The Clerk of the Court is respectfully directed to terminate the motions filed under Case No. 19-cv-9111 at ECF Nos. 8, 13, and 17, as well as the motions under Case No. 19-cv-9146 at ECF Nos. 9, 14 and 18.

Dated: August 24, 2020  
White Plains, New York

SO ORDERED:

A handwritten signature in blue ink, appearing to read 'Nelson S. Román', is written over a horizontal line.

NELSON S. ROMÁN  
United States District Judge